

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Interconnection and Resale Obligations) CC Docket No. 94-54
Pertaining to)
Commercial Mobile Radio Services)

**CONSOLIDATED RESPONSE OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD"), hereby submits this consolidated response to the petitions for reconsideration filed in the above-referenced proceeding.¹

RMD operates SMR systems that provide "interconnected"² mobile data services that do not offer real-time, two-way switched voice service. As such, its systems currently are excluded from the Commission's definition of "covered SMR" systems for purposes of this and other proceedings.³ This exclusion is entirely reasonable. RMD's systems are unlike traditional cellular and broadband PCS systems for which the resale rules were designed. As a result, RMD's systems do not compete in the same market, nor are they subject to the same competitive concerns, as "covered SMR" systems. Moreover, inclusion of RMD's data-only SMR services within the "covered SMR" definition would lead to nonsensical results in the other proceedings in which the covered SMR definition is being used to determine the applicability of Commission rules. Consequently, as the Commission properly recognizes, the costs of including data-only SMR systems within the "covered SMR" definition would far outweigh the benefits.⁴

¹ RMD herein responds to petitions for reconsideration filed in this proceeding by The American Mobile Telecommunications Association, Inc. ("AMTA"); The Personal Communications Industry Association ("PCIA"); AT&T Corp. ("AT&T"); Nextel Communications, Inc. (Nextel); and Small Business In Telecommunications, Inc. ("SBT").

² RMD's systems are deemed to be interconnected, however, only because of the Commission's expansive definition of "interconnected service," which includes systems that allow customers to interconnect to the public switched network. See In re Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1434-35 (1994).

³ The Commission also is considering the application of its rules regarding number portability (CC Docket No. 95-116), enhanced-911 (CC Docket No. 94-102), CMRS roaming (CC Docket No. 94-54), and RF emissions hazards (ET Docket No. 93-62) with respect to "covered SMR" services. To the extent that the Commission seeks to use a single uniform definition for "covered SMR" services in each of these contexts, therefore, it is essential that the Commission not consider RMD's comments herein in isolation, but rather consider the impact of its "covered SMR" definition to which these comments speak in a wide variety of contexts.

⁴ See In re Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report & Order (rel. July 12, 1996) ("First R&O") ¶ 19.

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Nonetheless, several parties have petitioned the Commission to reconsider its “covered SMR” definition and to amend it in ways that might, inadvertently or not, bring RMD’s mobile data systems within the scope of the definition. For the reasons set forth below, the Commission should reject these suggestions. Although RMD allows — indeed encourages — the resale of its services,⁵ it does not agree with those petitioners who have sought changes to the “covered SMR” definition, at least to the extent that the proposed changes would bring mobile data services within the ambit of the “covered SMR” definition.

That said, in so far as the current definition of covered services encompasses other types of systems for which inclusion may also be inappropriate, RMD does not oppose modifications that would expand the scope of the exemptions. Thus, for instance, RMD does not object to the addition of a “small system” exemption from the CMRS resale rule. Any such additional exemption, however, should not detract from or otherwise undermine the present exclusion of data-only systems from the basic “covered SMR” definition.

DISCUSSION

I. The Commission’s Exclusion Of Data-Only SMR Systems From The “Covered SMR” Definition Should Be Retained.

In the First R&O, the Commission determined that it will apply its CMRS resale rules to cellular, broadband PCS, and “covered SMR” systems. The First R&O defines “covered SMR” systems to include 800 MHz and 900 MHz SMR licensees that hold geographic area licenses and incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network.⁶ This definition, the Commission explained, was intended to exclude “local SMR systems offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis” because such systems “do not compete substantially with cellular and broadband PCS providers.”⁷ This exclusion of data-only SMR systems from the “covered SMR” definition is well founded and should be retained.

⁵ RMD presently has agreements with forty-two resellers of its services, covering a wide range of two-way messaging and other mobile data applications. RMD is actively negotiating with, and seeking, other resellers.

⁶ First R&O ¶ 19.

⁷ Id.

To begin with, data-only SMR systems provide services that are unlike the services offered by cellular, broadband PCS, and real-time, two-way voice SMR systems. These “covered” services are equivalent to, and a substitute for, wireline local exchange carrier services. Data-only SMR systems, by contrast, compete in different markets and are subject to different competitive concerns. For similar reasons, users of data-only SMR systems do not expect to use those systems as their primary personal communications technology. This consideration is particularly important with respect to the other proceedings in which the “covered SMR” definition is being used. For instance, it is unrealistic to assume or expect that users will rely on data-only SMR systems to contact public safety agencies in an emergency. The costs of extending the E911 requirements to data-only systems, therefore, far outweigh the benefits, as the Commission has correctly and properly recognized.

In addition, data-only SMR systems use technologies that distinguish them from cellular, broadband PCS and real-time, two-way voice SMR systems. These technological differences make coverage of data-only SMR systems inappropriate for certain rules. For example, RMD’s customers do not have a “telephone number,” *per se*, for use with the RMD system. These customers are assigned a unique identification code unrelated to local exchange telephone numbers. It makes no sense to speak in terms of number portability for these customers — they have no number to “port.” Moreover, the features and functions of a mobile data communications solution largely are dependent upon functionalities resident in client server software designed by or for the end user with little or no involvement of the carrier. As a result, it would be impossible for a carrier to provide, for instance, E911 capability if the user’s application software is not designed to support that feature.

In short, inclusion of RMD’s data-only SMR services within the “covered SMR” definition would be impractical, inefficient, and unnecessary.

II. Although Other Considerations May Warrant Additional Exclusions/Exemptions From Rules Pertaining To CMRS Providers, They Do Not Undermine The Basic Justification For The Exclusion Of Data-Only SMR Systems From The “Covered SMR” Definition.

As detailed above, the current exclusion of data-only SMR systems from the “covered SMR” definition is entirely consistent with the purposes underlying the substantive rules for which the definition is being used to determine coverage. Nonetheless, some of the petitions filed in this proceeding seek amendments to the

“covered SMR” definition which, apparently inadvertently, risk bringing mobile data SMR systems within the ambit of the “covered SMR” definition.

AMTA, for example, suggests that only those SMR systems that have an “in-network switching facility” should be deemed to be “covered SMRs.”⁸ AMTA posits that it is this “in-network switching” capability that distinguishes cellular-like from non-cellular-like systems. RMD disagrees. The appropriate inquiry, as the Commission recognizes in the First R&O, is whether a reasonable cost-benefit analysis, based on competitive factors in the market served by the system, supports imposition of a particular requirement.

Although the technical configuration of a system may be suggestive of the kind of service that the system provides, it is one step removed from the essential inquiry. As a result, ambiguities in the definition of “in-network switching” or a “mobile telephone switching facility” will lead to inadvertent inclusions and exclusions from coverage. For example, the definition offered by AMTA could be construed to include simple “interconnect patches” used by many analog SMRs to provide occasional interconnected service to their dispatch customers, but which do not support more sophisticated mobile telephone features such as on-call hand-off and seamless roaming.

RMD also opposes AMTA’s proposed rule to the extent that it eliminates the “real-time” voice service limitation on coverage. No explanation is offered by AMTA for the suggested rule change, which would inappropriately bring within the rule’s scope systems that use incidental, non-real-time voice messaging. Thus, for instance, if the real-time voice limitation were removed, systems providing only store-and-forward messaging would be required to provide E911 capabilities. Such a requirement would defy common sense and undermine the Commission’s efforts to streamline its regulatory requirements consistent with the Administration’s goal of reinventing government.⁹

PCIA, on the other hand, urges the Commission to abandon its functional approach to the “covered SMR” definition and, instead, to “employ a simple mobile

⁸ AMTA Petition for Reconsideration at 3-8; see also Nextel Petition for Reconsideration at 7 (urging the Commission to modify its “covered SMR” definition to include only “those SMR systems ... using a mobile telephone switching facility”).

⁹ See, e.g., USA Today, Clinton Goal: Fix Government, page 1A (Sept. 7, 1993) (effort to reinvent government will eliminate “absurd regulations”); 55 Broadcasting & Cable, Hundt: New Bureau To Enforce Cable Act (Dec. 20, 1993) (Cable Bureau intended to be more streamlined than other bureaus in accordance with efforts to reinvent government).

count definition to determine whether an SMR operator is a 'covered SMR provider.'"¹⁰ PCIA fails to explain what it believes that mobile-count should be. Although PCIA's suggested alternative definition has the appearance of regulatory simplicity,¹¹ it advocates the use of an inappropriate criterion to determine coverage.

Large or small, certain types of SMR providers (*e.g.*, those that provide data-only services), will compete in markets distinct from those in which cellular and broadband PCS providers compete. To the extent that the CMRS resale rules are intended to enhance competition in the wireless local exchange markets, therefore, the definition of SMR systems to be "covered" by Commission rules should turn upon the functional uses of the system, which will, in turn, determine the technical configuration of the system and the market in which it competes, rather than simply the size of the system. Further, to the extent that other CMRS rules applicable to "covered SMR" systems are intended to enhance consumer welfare or promote public safety, inclusion of data-only SMR systems will provide little or no benefit at an inordinately high cost.

Nonetheless, RMD recognizes that certain other considerations might favor an exemption from covered status for very small SMR systems. Indeed, the Commission frequently provides small system exemptions from its rules because of the hardship that application of the rules would work on small systems. The Commission should only adopt such an exemption in this context, however, recognizing that it addresses different concerns than those driving the basic limitations on the "covered SMR" definition. A small system exemption should not substitute for the general exclusion from coverage of systems providing services that do not compete substantially with cellular and broadband PCS voice systems.

¹⁰ PCIA Petition for Reconsideration at 21; see also AMTA Petition for Reconsideration at 8-9 (suggesting as an alternative that the Commission modify the "covered SMR" definition to include only systems serving twenty thousand 20,000 or more subscribers nationwide). SBT makes a series of suggestions based on the precise language used in each of three different orders in which the Commission has applied rules to "covered SMR" systems. The changes proposed by SBT appear to be intended to ensure that systems that do not compete in the "mass market for real-time, two-way voice services" are not encompassed within the "covered SMR" definition. See SBT Petition for Reconsideration at 4. Although RMD does not endorse the specific mechanisms by which SBT proposes to achieve this result, RMD does support the general purpose of the SBT petition.

¹¹ In fact, PCIA's approach is not as simple as it might first appear. Because configurations of SMR systems may vary, no single number can be identified that will provide a sensible and rational demarcation point between small and large systems in every case and with respect to every system architecture. PCIA's own difficulty in this regard illustrates this point.

Similarly, AT&T asks the Commission to exempt from the resale obligation, on regulatory parity grounds, systems that provide cellular and PCS data-only services.¹² RMD has no objection to this suggestion. As the Commission has recognized, it would be inappropriate to include data-only SMR providers within the definition of "covered SMR" systems. These systems do not compete in the same markets as traditional cellular or broadband PCS systems and the costs of such an extension would outweigh any competitive benefit that might accrue as a result.¹³ Indeed, such an extension of the CMRS resale rule might provide operators of data-only systems with a perverse incentive to eliminate interconnection in order to avoid "covered SMR" obligations. Thus, the Commission's current "covered SMR" definition excludes data-only SMR systems.

RMD does not, however, seek to use this exclusion for any unfair competitive advantage. To the extent that AT&T or other service providers use cellular or PCS spectrum for data-only services, they too should be exempt from the CMRS resale requirement. This exemption should apply, however, only to systems providing services that are clearly distinguishable from, and not bundled with, "covered" services.

CONCLUSION

For the reasons set forth above, RMD urges the Commission to retain a functional approach to its definition of "covered SMR" services and to continue to exclude from that definition data-only SMR systems. RMD does not object to the addition of a small system exemption to the "covered SMR" definition, so long as that exemption does not modify

¹² AT&T Petition for Reconsideration at 4-5. AT&T also asks that the Commission exempt CPE and non-common carrier services from the resale requirement, even if those services are bundled by the carrier with regulated services. *See id.* at 1-4. Whatever competitive concerns the Commission may have with respect to regulated CMRS services, the Commission should not extrapolate from those concerns a general resale rule applicable to non-regulated services. Thus, RMD supports AT&T's suggested limitation on the types of products and services encompassed within the CMRS resale rule.

¹³ *Firth R&Q* ¶ 19.

the basic definition. Finally, RMD does not object to an exemption from coverage of the CMRS resale rule for other data-only services using cellular or PCS spectrum.

Respectfully submitted,

RAM MOBILE DATA USA
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September 27, 1996

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I hereby certify that a true and correct copy of the foregoing Consolidated Response of Ram Mobile Data Usa Limited Partnership, was sent by first-class mail, postage prepaid, this 27th day of September, 1996, to each of the following:

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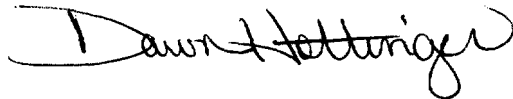
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